United States Department of Labor
Employees' Compensation Appeals Board

M.N., Appellant	)	
and	)	**Docket No. 21-0318**
	)	**Issued: August 19, 2021**
U.S. POSTAL SERVICE, CARO POST OFFICE, Caro, MI, Employer	)	

Appearances:
Shelley Coe, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 2, 2021 appellant, through counsel, filed a timely appeal from a July 20, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a cervical, thoracic, or lumbar spine condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

This case has been previously before the Board.[3] The facts and circumstances as set forth in the Board's prior decision are incorporate herein by reference. The relevant facts are as follows.

On March 25, 2013 appellant, then a 37-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a T8-9 disc protrusion, L5-S1 disc herniation, and hemangiomas at T1, T9-10, and L2 due to repetitive trauma as a result of driving a long life vehicle (LLV) on unmaintained roads while in the performance of duty on or before December 7, 2012, when she stopped work and did not return.[4]

By decision dated June 12, 2013, OWCP denied appellant's occupational disease claim, finding that fact of injury had not been established.

On July 30, 2013 appellant requested reconsideration. She again attributed the claimed spinal conditions to the physical stresses of driving an LLV over poorly-maintained rural roads. Appellant submitted a report dated April 15, 2013 by Dr. Naveed Mahfooz, a Board-certified internist, who diagnosed intramedullary hemangiomas of the spine, degenerative disc disease, two herniated discs, radiculopathy of both upper extremities, neuropathy, muscle spasms, and migraine headaches.

By decision dated October 28, 2013, OWCP denied modification of its June 12, 2013 decision.

On June 3, 2014 appellant, through counsel, requested reconsideration. She attributed the claimed spine conditions to repetitive bending, reaching, and lifting, and driving an LLV over uneven roads.[5]

In an April 2, 2014 report, Dr. Mahfooz diagnosed torticollis, degenerative cervical disc disease with cervicalgia, spondylosis from C6 through T1, a thoracic intermedullary hemangioma,

[3] Docket No. 19-1421 (issued March 5, 2020).

[4] A November 30, 2012 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated mild spondylosis from C5 through T1 without central canal stenosis, mild narrowing of the neural foramina bilaterally at C7-T1 secondary to facet arthropathy and uncovertebral joint arthropathy, and a T1 hemangioma. A December 13, 2012 MRI scan of the thoracic and lumbar spine demonstrated a left-sided paracentral disc protrusion at T8-9 with mild flattening of the ventral spinal cord, right-sided degenerative facet changes at T9-10 with effacement of the thecal sac, mild-to-moderate foraminal narrowing at T1-2 due to osteophytic spurring, and hemangiomas at T7 and T10.

[5] March 26, 2013 computerized tomography (CT) scans of the cervical and lumbar spine demonstrated straightening of the normal cervical lordotic curvature, minimal degenerative changes of the mid-lower cervical spine, and minimal annular bulges from L4 through S1.

thoracic degenerative disc disease with a left paracentral protrusion at T9-10, thoracic pain with radiation, bulging intervertebral discs with underlying degenerative disc disease, right L5 radiculitis, right sacroiliac joint dysfunction, sacroiliitis, and sciatica. He opined that repetitive lifting, bending, twisting, and driving the LLV resulted in degenerative disc disease, which progressed to acute disc protrusions, disc bulging, and paraspinal spasms. Dr. Mahfooz explained that appellant's cervical spine pathology, cervical disc bulges, and lumbar disc bulges were consistent with repetitive strain injuries and excessive forces caused by heavy lifting with repetitive twisting and turning.

On November 12, 2014 OWCP obtained a second opinion from Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon. Dr. Obianwu diagnosed a resolved soft tissue injury of the cervical, thoracic, and lumbar spine; cervical spondylosis; degenerative disc disease; arthritic changes throughout the cervical spine; thoracic spondylosis; mild lumbar spondylosis; and a right foraminal disc protrusion at L5-S1. He attributed appellant's degenerative disc disease to aging with possible contribution from obesity, with no influence by work factors. Dr. Obianwu opined that she could return to her date-of-injury job as a rural mail carrier.

By decision dated December 22, 2014, OWCP modified its October 23, 2013 decision to accept the alleged employment factors; however the claim remained denied as causal relationship had not been established. It accorded the weight of the medical evidence to Dr. Obianwu.

On December 21, 2015 appellant, through counsel, requested reconsideration. She submitted additional evidence, including chart notes dated from April 16, 2014 through April 11, 2016 from Dr. Mahfooz holding appellant off work due to severe fibromyalgia, neck, back, and right hip pain.

By decision dated October 24, 2017, OWCP denied modification of its December 22, 2014 decision.

On October 23, 2018 appellant, through counsel, requested reconsideration.

In chart notes dated from November 16, 2017 to August 2, 2018, Dr. Mahfooz renewed medications. In a report dated December 21, 2017, he noted that appellant had sustained an occupational injury a few years previously. Dr. Mahfooz diagnosed low back pain, right leg numbness, lumbar arthritis, degenerative disc disease, radiculopathy, and right hip pain. He found appellant totally and permanently disabled from work.

In a report dated October 17, 2018, Dr. Todd K. Best, a Board-certified physiatrist, noted an occupational right shoulder injury in 2000 and the onset of severe cervical spine symptoms on November 19, 2012. He related her account of falling many times on icy ground while delivering mail, pounding open frozen mailboxes with a rubber mallet, and using her right arm to brace herself when driving the LLV over uneven roads to avoid jarring her back. On examination Dr. Best noted weakness in the left lower extremity, bilateral cervical paraspinal spasm, and limited range of motion of the cervical spine, lumbar spine, right hip, and right shoulder. He also reviewed medical records and imaging studies. Dr. Best diagnosed cervical disc derangement at C5-6, C6-7, and C7-T1 with subsequent spondylosis and bilateral C7-T1 foraminal stenosis, multilevel thoracic

disc derangement with a T8-9 disc protrusion flattening the ventral spinal cord, multilevel lumbar disc derangement with L5-S1 disc protrusion causing right foraminal narrowing, and right rotator cuff impingement with adhesive capsulitis. He explained that repetitive heavy lifting, while at work, caused adhesive capsulitis of the right shoulder. Driving over potholes caused "constant jarring pressure on the cervical, thoracic, and lumbar spinal discs," compounded by repetitive rotational forces from sorting and delivering mail. These forces caused T8-9 and L5-S1 disc herniations, microscopic tears in the C5-6, C6-7, and C7-T1 discs resulting in disc bulges, culminating in spondylosis and bilateral neural foraminal narrowing. Dr. Best found appellant totally and permanently disabled for work.[6]

By decision dated January 23, 2019, OWCP denied modification of its October 24, 2017 decision. Appellant, through counsel, appealed to the Board.[7]

By decision issued March 5, 2020,[8] the Board found that this case was not in posture for decision due to a conflict in medical opinion between Dr. Mahfooz and Dr. Best, appellant's treating physicians, and Dr. Obianwu, OWCP's referral physician, as to whether appellant sustained a cervical, thoracic, or lumbar spine condition due to repetitive motion and driving an LLV while in the performance of duty. The Board remanded the case to OWCP for referral to an impartial medical examiner (IME) to resolve the conflict, to be followed by issuance of a *de novo* decision.

On June 24, 2020 OWCP referred appellant, the medical record, and SOAF to Dr. Stanley S. Lee, a Board-certified orthopedic surgeon, for an impartial medical examination. In a July 10, 2020 report, Dr. Lee summarized a history of injury and treatment and reviewed medical records. He opined that the November 30, 2012 MRI scan of the cervical spine and December 13, 2012 MRI scans of the thoracic and lumbar spine were negative for traumatic change and were "essentially normal." Similarly, Dr. Lee noted that the March 26, 2013 CT scans of the cervical and lumbar spine were "negative for osseous abnormality," the January 2, 2015 thoracic MRI scan was normal, and the October 17, 2018 thoracic and lumbar MRI scans reviewed by Dr. Best showed "no evidence of pathology." He noted appellant's symptoms of occasional right-sided sciatica, lumbar pain, neck pain, and thoracic pain that radiated upward and caused migraine headaches. On examination Dr. Lee observed normal strength, reflexes, and neurologic findings throughout the upper and lower extremities and noted "[f]unctional range of extension and flexion" throughout the spine, with negative bilateral straight leg raising tests. He indicated that there were no objective findings on physical examination of appellant's extremities, neck upper, and lower back. Further, Dr. Lee opined that nothing in the records supported ongoing impairment. He asserted that the appellant had numerous subjective complaints that were not substantiated by any objective findings and that the medical record did not contain objective

[6] Appellant also provided chart notes dated from February 8 through October 4, 2018, which do not bear a legible signature, February 16, 2018 lumbar x-rays demonstrating mild degenerative changes from L2 through L4, and physical therapy notes dated from February 20 through August 27, 2018.

[7] During pendency of the appeal, OWCP received chart notes from Dr. Mahfooz dated from May 6, 2015 through November 1, 2018 and October 12, 2018 x-rays of the right shoulder, which did not demonstrate any abnormalities.

[8] *Supra* note 4.

evidence of work-related traumatic musculoskeletal or neurological changes, with no "meaningful change in pathology as it relate[d] to her employment." Dr. Lee concluded that there was no evidence to support work injury or impairment.

By decision dated July 20, 2020, OWCP denied modification of its January 23, 2019 decision. It accorded Dr. Lee's opinion as impartial medical examiner the special weight of the medical evidence.

LEGAL PRECEDENT

An employee seeking benefits under FECA[9] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,[10] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[11] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[12]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[13]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[14] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed

[9] *Supra* note 2.

[10] *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008); *Joe D. Cameron*, 41 ECAB 153 (1989).

[11] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[12] *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[13] *T.D.*, Docket No. 20-0921 (issued November 12, 2020); *M.S.*, Docket No. 18-1554 (issued February 8, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[14] *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *T.H.*, 59 ECAB 388, 393 (2008); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert G. Morris*, 48 ECAB 238 (1996).

condition and the specific employment factors identified by the employee.[15] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[16]

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[17]

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.[18] This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[19] When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently rationalized and based upon a proper factual background, must be given special weight.[20]

When OWCP obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in medical opinion, and the specialist's opinion requires clarification or elaboration, OWCP must secure a supplemental report from the specialist to correct the defect in the original report.[21]

ANALYSIS

The Board finds that this case is not in posture for decision.

[15] *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[16] *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[17] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[18] 5 U.S.C. § 8123(a); *C.F.*, Docket No. 20-0222 (issued December 21, 2020); *M.W.*, Docket No. 19-1347 (issued December 5, 2019); *C.T.*, Docket No. 19-0508 (issued September 5 2019); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

[19] *S.S.*, Docket No. 19-1658 (issued June 24, 2019); *C.W.*, Docket No. 18-1536 (issued June 24, 2019).

[20] *M.W.*, *supra* note 18; *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

[21] *R.T.*, Docket No. 20-0081 (issued June 24, 2020); *Raymond A. Fondots*, 53 ECAB 637, 641 (2002); *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988); *Ramon K. Ferrin, Jr.*, 39 ECAB 736 (1988).

In the prior appeal, the Board found a conflict in the medical opinion evidence between Dr. Mahfooz and Dr. Best, for appellant, and Dr. Obianwu, an OWCP referral physician. The Board remanded the case to OWCP to obtain a report from an IME to resolve the conflict.

On remand, OWCP referred appellant to Dr. Lee for an impartial medical examination. In a July 10, 2020 report, Dr. Lee summarized appellant's history of injury noted his review of the medical record. He observed normal strength, reflexes, and neurologic findings throughout the upper and lower extremities and noted "[f]unctional range of extension and flexion" throughout the spine, with negative bilateral straight leg raising tests. Dr. Lee indicated that there were no objective findings on physical examination of appellant's extremities, neck upper, and lower back to support ongoing impairment. He opined that the November 30, 2012 MRI scan of the cervical spine and December 13, 2012 MRI scans of the thoracic and lumbar spine were negative for traumatic change and were "essentially normal." Similarly, Dr. Lee noted that the March 26, 2013 CT scans of the cervical and lumbar spine were "negative for osseous abnormality;" the January 2, 2015 thoracic MRI scan was normal; and the October 17, 2018 thoracic and lumbar MRI scans reviewed by Dr. Best showed "no evidence of pathology." Although Dr. Mahfooz, Dr. Best, and second opinion physician Dr. Obianwu all diagnosed multilevel disc bulges, disc protrusions, and degenerative changes, Dr. Lee failed to explain, with rationale, why his findings differed form theirs.

To be entitled to special weight, an IME's opinion must contain clear, persuasive rationale on the critical issue in the claim.[22] When the IME's opinion requires clarification or elaboration, OWCP must secure a supplemental report to correct the defect in his or her original report.[23] Accordingly, the case will be remanded to OWCP for a fully-rationalized opinion from Dr. Lee, based upon an updated SOAF, regarding whether appellant sustained a medical condition causally related to the accepted work factors. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

[22] *R.T., id.*; *A.R.,* Docket No. 17-1358 (issued February 1, 2018).

[23] *Talmadge Miller,* 47 ECAB 673 (1996); *Harold Travis,* 30 ECAB 1071, 1078 (1979); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810(11)(c)(1)-(2) (September 2010).

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2020 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 19, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board